

DONALD E. YOUNG
Claimant

SUNSHINE BISCUITS, INC.
Respondent

CONTINENTAL CASUALTY COMPANY
Insurance Carrier

Conversely, the respondent argues that the Appeals Board does not have jurisdiction to review this preliminary hearing Order because the issue raised relates to the medical causation of claimant's bilateral knee complaints and the Appeals Board does not have jurisdiction to review that issue from a preliminary hearing order. Furthermore, if the Appeals Board decides it has jurisdiction to review the Administrative Law Judge's preliminary hearing Order, the respondent contends claimant failed to prove his bilateral

knee problems arose out of and the in the course of his employment. Additionally, respondent contends claimant failed to prove he provided respondent with timely notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

FINDINGS OF FACT

- (1) Claimant commenced working for the respondent in 1972. On the date of the preliminary hearing, July 20, 1999, claimant remained employed by the respondent as a forklift operator.
- (2) Claimant testified he first started having pain and swelling in his right knee during the first or second week in July 1997.
- (3) In July 1997, the forklift claimant normally operated broke down. Claimant was then assigned a different forklift to operate. This particular forklift model required the claimant to sit with his right knee directly pressing on a shaft that would move up and down as the claimant operated the forklift. This repeated up-and-down movement caused claimant to have pain and swelling in his knee.
- (4) The claimant had been diagnosed with multiple sclerosis (MS) in January 1993.
- (5) Because of the MS condition, claimant first thought that his right knee symptoms were caused by the MS.
- (6) After two weeks of symptoms, claimant determined he had not had any previous swelling and pain in his right knee and realized that the operation of this forklift with his right knee pressing on the shaft was the cause of his right knee problems. He then notified the paramedic who was employed by the respondent that he was experiencing swelling and pain in his right knee from driving the forklift.
- (7) Respondent sent claimant to Occupational Health Services on July 24, 1997. Claimant was examined at the Occupational Health Services and medical treatment, including physical therapy, was recommended. But respondent's insurance carrier denied claimant's request for medical treatment.
- (8) Claimant went on his own to his family physician, John Campobasso, D.O. Dr. Campobasso found mild effusion and tenderness of the joint space of the right knee. He also found some tenderness of the left knee. His impression was internal derangement

of the right knee versus marked femoropatellar dysplasia. He scheduled claimant for a MRI examination and placed claimant on medication.

(9) In a letter dated October 29, 1997, Dr. Campobasso found claimant had pain and swelling in the right knee. His diagnosis was patellofemoral syndrome. Furthermore, it was the doctor's opinion that the fact claimant suffered from MS had no bearing on his knee injury and the MS was a separate issue.

(10) Dr. Campobasso referred claimant to orthopedic surgeon, Gregory L. Barnhill, D.O. Dr. Barnhill first saw claimant on April 6, 1998. He found claimant to have swelling in front of the right knee with signs of chronic right prepatellar bursitis. He aspirated the right knee and injected the knee with a steroid. The doctor also found moderate interarticular effusion of the left knee.

Dr. Barnhill's final recommendation was to excise the right knee prepatellar bursa and while claimant was under the anesthesia perform diagnostic arthroscopy of the left knee.

(11) At claimant attorney's request, claimant was examined and evaluated by P. Brent Koprivica, M.D., on December 14, 1998. Dr. Koprivica found claimant with complaints of swelling and tenderness of the right knee. Claimant's left knee had medial joint pain and continued to catch and experienced weakness going downstairs. After performing a physical examination of claimant and reviewing previous medical treatment records, the doctor concluded that claimant sustained a permanent cumulative injury to his right knee from operating the forklift for the respondent. This resulted in the development of chronic prepatellar bursitis in the right knee. Additionally, the doctor opined, as a direct and probable consequence of the right knee injury, claimant developed left knee pain because of favoring the injured right knee. He diagnosed left knee patellofemoral chondromalacia as well as medical compartment pain. Dr. Koprivica recommended a right knee prepatellar bursectomy and left knee diagnostic arthroscopy.

(12) The Administrative Law Judge ordered claimant to undergo an independent medical examination by orthopedic surgeon, Roger W. Hood, M.D. Dr. Hood examined claimant on April 22, 1999. He found claimant to have bilateral knee complaints. He diagnosed claimant's right knee with a classic case of prepatellar bursitis. The left knee catches going downstairs, and claimant has left knee pain climbing stairs. The doctor attributed the right knee problems to claimant's work and the left knee problems were secondary to protecting the injured right knee. Dr. Hood recommended an MRI of the left knee followed by arthroscopy. The right knee needed the prepatellar bursa excised.

CONCLUSIONS OF LAW

(1) The Appeals Board finds that the preliminary hearing issue raised by the claimant is whether claimant suffered an accidental injury that arose out of and in the course of his

employment with respondent. That is an issue that is identified as a jurisdictional issue in the preliminary hearing statute. Therefore, the Appeals Board finds it has jurisdiction to review this preliminary hearing Order.¹

(2) An injury to a worker arises “out of” the employment if the cause or origin of the accident has some casual connection between the accidental injury and the employment. An injury to a worker is “in the course of” the employment if it relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer’s service.²

(3) The Appeals Board concludes that claimant’s testimony, coupled with the medical records and reports admitted into evidence at the preliminary hearing, prove that claimant’s right knee was injured while operating a forklift for the respondent. Claimant’s right knee injury was caused by the direct pressure of the knee against the shifting shaft of the forklift over a two to three week period in July, 1997.

(4) There is no evidence in the preliminary hearing record that would attribute claimant’s bilateral knee symptoms to his MS condition.

(5) When a primary injury under the workers compensation act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is the direct and natural result of the primary injury.³

(6) The Appeals Board also concludes that the testimony of claimant, coupled with the medical records and reports admitted into evidence at the preliminary hearing, prove that claimant injured his left knee as the direct and natural result of claimant compensating for his work-related right knee injury.

(7) The Appeals Board concludes that claimant established that he notified the paramedic employed by the respondent of his right knee injury on July 24, 1997, which is within the ten-day period notice requirement contained in K.S.A. 44-520.

(8) Claimant is in need of medical treatment for his bilateral knee injuries as noted in the medical reports of Dr. Hood and Dr. Koprivica.

¹See K.S.A. 1998 Supp. 44-534a(a)(2).

²See Kindel v. Ferco Rental, Inc., 258 Kan. 272, 278, 899 P.2d 1058 (1995).

³See Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d. 510, Syl. ¶2, 949 P.2d. 1149 (1997).

(9) At the preliminary hearing, claimant requested medical treatment through orthopedic surgeon, Roger W. Hood, M.D.

(10) The Appeals Board, therefore, orders the respondent to provide medical treatment for claimant's bilateral knee injuries through Roger W. Hood, M.D., as claimant's authorized treating physician.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Steven J. Howard's July 21, 1999, preliminary hearing Order should be, and hereby is, reversed and Roger W. Hood, M.D., is appointed claimant's authorized treating physician for treatment of claimant's work-related bilateral knee injuries.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Gary R. Terrill, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director